



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF K-S-

DATE: MAY 30, 2018

APPEAL NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a travel consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and argues that she is eligible for a national interest waiver as a member of the professions holding an advanced degree.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(i) provides that, in order to show an individual is a professional holding an advanced degree, the petition must be accompanied by:

- (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

## II. ANALYSIS

### A. Eligibility for the Underlying Visa Classification

As a preliminary matter, the regulation at 8 C.F.R. § 204.5(k)(3)(i) states that, to demonstrate that the Petitioner is a professional holding an advanced degree, the petition must be accompanied by either an official academic record showing that she holds an advanced degree or a foreign equivalent degree, or an official academic record showing that she holds a United States baccalaureate degree or a foreign degree equivalent and evidence in the form of letters from current or former employers showing that she has at least five years of progressive post-baccalaureate experience in the specialty. The Director found that the Petitioner qualifies as professional holding an advanced degree. However, we find that the documentary evidence does not meet the relevant requirements, and we will withdraw the Director's favorable determination on this issue.

Specifically, the record includes a copy of the Petitioner's diploma from [REDACTED] in [REDACTED] Korea, evidencing that in 2014, she earned a doctor of hotel tourism management. The record,

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

however, does not contain an academic credentials evaluation to establish her foreign degree's equivalency to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A). Thus, the Petitioner has not documented her qualifications as an advanced degree professional. In addition, we find that, even if she had demonstrated her qualifications for the underlying visa classification, she has not established eligibility for a national interest waiver as explained below.

#### B. National Interest Waiver

In a letter accompanying the petition, the Petitioner indicated that she plans to serve as the founder and executive manager of [REDACTED] a destination management company engaged in the marketing and sales of experiential tour packages to East Asian nationals visiting the United States. She explains that this company will "develop experiential tour programs of diverse and unique target segments not available in the market including Amish residential, national parks, and historical sites," and that the company intends to "offer extended access and unique experience to inbound tourists to discover remote, unknown, and yet economically deprived areas of the United States." She states that the company will partner with two Asian travel companies, [REDACTED] and [REDACTED] to sell travel packages in the South Korean market, though she does not provide the specifics of their partnerships or indicate where the company will be headquartered in the United States.

The record includes copies of a business plan, feasibility analysis, and a monthly development plan for the business along with a description of the Petitioner's proposed duties. Her stated duties include establishing executive plans; conferring with business development representatives to discuss and approve policies, travel packages, duration and costs; planning, developing, and establishing management, operations, sales, and marketing policies and objectives by reviewing activity reports, financial statements, and market conditions; making decisions regarding major financial operations; evaluating the performance of staff and contractors; and, documenting the company minutes and decisions to preserve corporate formalities of the Board of Directors and shareholders. The company's undated organizational chart lists four employees, all under the direct or indirect supervision of the Petitioner.

The record includes articles and research studies discussing the economic impact of travel and tourism on the U.S. economy, and reports from the World Tourism Organization showing the potential for tourism to positively impact U.S. job creation. For example, a research report from the National Travel and Tourism Office entitled "Market Profile: South Korea" details the growth of U.S. tourism activity from Korean nationals and its benefits. We find that the Petitioner's proposed work, which aims to advance her entrepreneurial business endeavor, create jobs, and contribute to the U.S. tourism industry, has substantial merit.

To evaluate whether the Petitioner's work satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. The relevant question is not the importance of the fields or industries in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "[a]n endeavor that has significant potential to employ U.S.

workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

Here, the record includes financial documents including a copy of [REDACTED] undated business plan. According to the business plan, [REDACTED] is forecast to earn \$886,750 in gross revenue in its first year of operation growing to a projected \$2,674,024 in its fifth year of operation, and its anticipated payroll expenses are projected to grow from an estimated \$168,833 in its first year of operation to \$299,483 in its fifth year. The business plan also includes a personnel summary stating that the company will reach a total headcount of 8 employees in year five.

However, the documentation submitted does not explain how these metrics demonstrate that her endeavor will offer substantial economic benefits to the region in which the business is located or to the nation, nor did she offer evidence that her work stands to have positive economic effects that reach beyond Experiential Travel to affect the area more broadly. First, as stated above, the Petitioner did not provide sufficient information explaining where the U.S. business will be located. While she states throughout the record that the company will offer tour packages and residential stays in “various parts of the United States including California, New York, Illinois, Texas, Florida, Georgia, Arizona, and Iowa” she does not provide specific information about where in these states she plans to offer tour experiences or explain where the company will house its operations or employ workers. Further, she has not offered evidence demonstrating how the company’s anticipated revenue of \$2.6 million in its fifth year of operation represents a substantial economic benefit to the regional or national economy, or how, for instance, its sales projections represent a meaningful increase in tourism in any of the states noted. While the Petitioner provided industry data forecasting growth in the tourism industry over the next five years, she did not offer information or evidence regarding her company’s role in the growth of this industry.

Overall, the economic data provided indicate that the Petitioner’s business is growing but they do not show that benefits to the regional or national economy would reach the level of substantial positive economic effects” contemplated by *Dhanasar*. While the Petitioner claims that the company “has a significant potential to contribute to the welfare enhancement for the economically deprived areas” she has not offered sufficient evidence that the area where the company is located is economically depressed or that the company would offer the region a substantial economic benefit through either its employment levels or tourism business. Nor has the Petitioner established that her proposed business would otherwise have broader implications within the field of tourism. As such, based upon the business metrics provided, the Petitioner has not established that her proposed endeavor is of national importance.

As the documentation in the record does not establish the national importance of her proposed endeavor(s) as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

The Petitioner has not sufficiently documented her eligibility as a member of the professions holding an advanced degree. In addition, as the Petitioner has not established that she meets the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-S-*, ID# 1208526 (AAO May 30, 2018)